

REED SMITH SHAW & McCLAY

FAX 202-457-6113  
TELEX NO. 64711

1200 18TH STREET, N.W.  
WASHINGTON, D.C. 20036

202-457-6100

WRITER'S DIRECT DIAL NUMBER

ORIGINAL  
FILE

PITTSBURGH, PA  
PHILADELPHIA, PA  
HARRISBURG, PA  
McLEAN, VA

(202) 457-8627

June 25, 1992

RECEIVED

JUN 25 1992

Ms. Donna Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

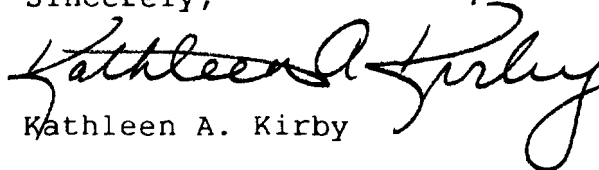
Re: Shared Use of the 900 MHz Paging Frequencies  
RM-7986

Dear Ms. Searcy:

Transmitted herewith on behalf of Paging Network, Inc.  
are an original and five (5) copies of its Reply Comments in the  
above-captioned proceeding.

Should any questions arise in connection with this  
filing, kindly contact the undersigned counsel directly,

Sincerely,

  
Kathleen A. Kirby

Enclosures

No. of Copies rec'd  
List A B C D E

0 + 5

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

JUN 25 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 90.494 of )  
the Commission's Rules and )  
Regulations Concerning Shared Use )  
of 900 MHz Paging Frequencies )

RM-7986

REPLY COMMENTS OF PAGING NETWORK, INC.

PAGING NETWORK, INC.

Judith St. Ledger-Roty  
Lynn E. Shapiro  
Kathleen A. Kirby

REED SMITH SHAW & McCLAY  
1200 18th Street, N.W.  
Washington, D.C. 20036  
(202) 457-8656

Its Attorneys

Dated: June 25, 1992

## SUMMARY

On April 24, 1992, the Association for Private Carrier Paging Section ("APCP") of the National Association of Business and Educational Radio, Inc. filed a Petition to provide "earned exclusivity" for certain private carrier paging channels. APCP's proposal sets out different local, regional, and national criteria to qualify for exclusivity, and reflects a consensus reached by both large and small PCP operators.

PageNet believes, and the record amply establishes, that adoption of APCP's proposal will promote the continued growth and expansion of 900 MHz PCP systems, and will prevent the channel sharing problems which have developed on paging channels below 470 MHz. "Earned exclusivity," as defined in APCP's Petition, will allow both large and small carriers to exist side by side while maximizing spectral, technical, and operational efficiencies. Moreover, the efficiencies resulting from this new regulatory framework will serve the public interest by providing consumers with higher quality, diverse communications at a lower price.

None of the comments filed in opposition in this proceeding demonstrates any countervailing public interest detriment. The oppositions of two commenters, Mtel and Dial Page, amount to thinly-veiled attempts to prevent increased competition in the market for national and regional paging services. The other concerns raised, notably the potential for speculative abuse and the impact on smaller carriers, are easily assuaged. APCP's proposed construction criteria offer adequate safeguards to thwart speculative abuses. The assertion by some commenters that APCP's

proposal will result in a mass conversion to nationwide systems is simply not grounded in reality, as only a limited number of companies have the resources to construct and operate a nationwide system. To the contrary, APCP's proposal facilitates the provision of services by both large and small carriers on a local, regional, and national basis to the greatest number of users possible, consistent with and in furtherance of the mandate of the Communications Act.

In light of the above, PageNet urges the Commission to initiate a proceeding proposing to expeditiously adopt APCP's proposal.

## TABLE OF CONTENTS

	Page
I. BACKGROUND.....	2
II. DISCUSSION.....	3
A. Precluding Earned Exclusivity for Nationwide and Regional Systems Would Have Anticompetitive Effects.....	3
B. The Commission Should Adopt APCP's Proposal As No Commenter in this Proceeding Offers Any Reason Why Its Adoption Would Not Serve the Public Interest.....	5
1. APCP's Proposal Provides Licensees with the Incentive to Develop Spectrum Efficient Technologies and Alleviates the Problems Associated With Frequency Sharing.....	6
2. Earned Exclusivity Will Not Result in an Overabundance of Nationwide Systems Nor Will It Preclude Local and Regional Service.....	8
3. APCP's Proposal Allows Large and Small Carriers to Exist Side by Side.....	12
4. APCP's Proposal Offers Adequate Safeguards to Thwart Potential Speculative Abuses.....	13
5. APCP's Proposal is Consistent With the Language and Intent of Section 332 of the Communications Act.....	16
III. CONCLUSION.....	17

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

JUN 25 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 90.494 of            )  
the Commission's Rules and                )  
Regulations Concerning Shared Use        )  
of 900 MHz Paging Frequencies            )       RM-7986

To: The Commission

REPLY COMMENTS OF PAGING NETWORK, INC.

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to Section 1.405 of the Commission's Rules, hereby submits its reply comments in support of the Petition for Rulemaking ("Petition") filed April 24, 1992 by the Association for Private Carrier Paging Section ("APCP") of the National Association of Business and Educational Radio, Inc. ("NABER"). The Petition seeks to amend Section 90.494 of the Commission's Rules to provide for exclusive use of certain Private Carrier Paging ("PCP") channels in the 900 MHz band. As demonstrated in its Comments filed June 10, 1992 ("PageNet Comments"), PageNet urges the Commission to initiate a proceeding proposing to expeditiously adopt APCP's proposal.

## I. BACKGROUND

In short, under APCP's proposal, exclusive licensing for certain PCP channels would not be automatic -- it would be earned. The proposal sets out differing local, regional and national criteria for 900 MHz licensees to qualify for exclusivity.<sup>1</sup> To further ensure that only bona fide service providers apply for exclusive frequency use, APCP proposes that each transmitter must have minimum output power of 100 watts; have simulcast capability; and be part of a functioning paging system.

The APCP Petition reflects the consensus reached at numerous meetings attended by large and small PCP operators in the 150, 460, and 900 MHz paging bands. Seven parties filed Comments in the resulting proceeding. PageNet and PacTel Paging ("PacTel"), both experienced PCP and RCC operators, firmly believe that adoption of APCP's proposal will promote the continued growth

---

<sup>1</sup> These requirements are:

1. Local: Where a licensee has six (6) or more contiguous transmitter sites in a market, no transmitter site of another licensee would be authorized within seventy (70) miles of a transmitter site entitled to exclusivity;
2. Regional: Where a licensee has seventy (70) or more transmitter sites, which need not be contiguous, in not more than twelve (12) contiguous states, no transmitter site of another licensee would be authorized within seventy (70) miles of a transmitter site entitled to exclusivity;
3. National: Where a licensee has three hundred (300) or more transmitter sites in any number of locations throughout the United States, no additional systems will be licensed on the same frequency anywhere in the country.

and expansion of 900 MHz PCP systems, and will prevent the channel sharing problems which have developed on paging channels below 470 MHz. Mobile Telecommunication Technologies Corporation ("Mtel") and Dial Page, L.P. ("Dial Page") oppose APCP's proposal, but the concerns they raise are hollow, and, as demonstrated below, may be characterized as anticompetitive in nature. Three commenters filed "form" oppositions at Mtel's urging, repeating the same, hollow concerns. Finally, Dial-A-Page strongly supports the idea of earned exclusivity for local and regional PCP licensees, but raises fears concerning nationwide systems. These fears, specifically the potential for speculative abuse and the impact on smaller carriers, are easily assuaged, as demonstrated below.

## II. DISCUSSION

### A. Precluding Earned Exclusivity for Nationwide and Regional Systems Would Have Anticompetitive Effects

Two commenters in this proceeding, Mtel and Dial Page, strongly oppose APCP's Petition, citing various reasons, including the potential impact national systems will have on other uses of 900 MHz frequencies and possible speculative abuses. APCP's Petition, as well as the Comments filed by PageNet and PacTel, adequately address these fears. Neither Mtel nor Dial Page offers any solid ground on which to deny APCP's Petition. What their oppositions do amount to is a thinly-veiled attempt to prevent increased competition in the market for national and regional paging services.



Mtel's opposition is preoccupied with APCP's proposal for earned exclusivity for nationwide systems. It completely ignores the balance of APCP's Petition concerning earned exclusivity for local and regional carriers. Because Mtel operates a nationwide system as a common carrier, granting nationwide exclusivity to PCP operators that have already built-out 300 or more transmitters in their 900 MHz systems might have a significant competitive effect on Mtel's market. For example, Mtel could be forced to lower its prices. Mtel's nationwide service, SkyTel, is currently marketed at a rate of \$69.00 per month for up to 200 pages. PageNet, a potential competitor at 929 MHz, offers subscribers a service including most major cities for less than half that price -- \$29.00 per month. Thus, Mtel's Opposition, in effect, proposes to extinguish increased competition in the nationwide market and would deprive end-users of significant benefits -- more choice and lower cost.

Mtel has no real interest in this proceeding, as it is not a PCP licensee. While Mtel implies that it speaks for the PCP industry when it presumes to "assist the Commission" in understanding the ramifications of APCP's proposal, in fact, Mtel is challenging the consensus reached by a large number of PCP operators, both large and small, who participated in the discussions leading to APCP's Petition. Mtel distributed a flyer entitled "Plain Facts About NABER's Petition for 900 MHz Protection" urging recipients to oppose APCP's Petition and even going so far as to include a convenient form for filing such opposition with the Commission. See Mtel Flyer, attached hereto

as Exhibit 1. Only three recipients filed an opposition at Mtel's urging.

Dial Page operates a regional system in the southeast, where significant state entry barriers have resulted in limited competition for paging services. Like Mtel's Comments, Dial Page's Opposition focuses on earned exclusivity for wide-area systems, and its suggestions would have similar anticompetitive effects. Conversely, giving PCP operators the incentive to invest in and expand systems that would compete with systems like Dial Page's would result in obvious benefits to end-users -- increased competition, more choice and lower cost.

**B. The Commission Should Adopt APCP's Proposal As No Commenter in this Proceeding Offers Any Reason Why Its Adoption Would Not Serve the Public Interest**

---

Despite their strong incentives to keep competitors out of their markets, neither Mtel nor Dial Page is able to offer any logical or legitimate reason why APCP's proposal should not be adopted. Nor is any convincing reason offered by any other commenter in this proceeding. Those comments filed in opposition are primarily concerned with (1) frequency sharing; (2) whether conversion to national systems will limit spectrum availability for other uses of the 900 MHz frequencies; (3) the effects of APCP's proposal on smaller carriers; (4) the proposal's potential for speculative abuses and (5) the potential regulatory impact. These concerns are discussed in turn below.

1. APCP's Proposal Provides Licensees with the Incentive to Develop Spectrum Efficient Technologies and Alleviates the Problems Associated with Frequency Sharing

Dial Page's opposition disputes the fact that problems exist with channel sharing. Dial Page Comments at 2-3. Dial Page apparently operates in a vacuum, however, as its experience differs from that of the majority of operators in the 150 and 460 MHz bands. The Commission itself has recognized the significant problems associated with congestion and channel sharing and has initiated a proceeding in order to determine how to alleviate the significant problems associated with these frequencies. See Notice of Inquiry in PR Docket 91-70, 6 FCC Rcd 4126 (1991) ("Refarming NOI").

PageNet's Comments offer concrete examples of the problems associated with channel sharing. See PageNet Comments at 7-8. To reiterate, congestion on the frequencies below 470 MHz has resulted in service degradation, including unacceptable interference and transmission delays, for end-users. Moreover, as new technologies are introduced, the compatibility necessary for any frequency sharing will be reduced or eliminated. Without this compatibility, the provision of innovative services to end-users may be delayed or precluded. See PageNet Comments at 12-13.

While Dial Page asserts that concerns of spectral efficiency play little part in APCP's proposal, Dial Page Comments at 4, they are, in fact, its foundation. As APCP recognizes in its Petition, and as PageNet and PacTel reinforce in their Comments, existing PCP policy requires shared use of bands without

any direct reward for spectrum efficiency. As a result, PCP operators have no incentive to develop spectrum efficient technologies. By offering earned exclusivity in the 929 MHz band, however, the Commission would provide that incentive while assuring that the licensees which obtain an exclusive channel will use these frequencies to avail subscribers of high quality paging services.

While Dial Page would have the Commission believe that frequency sharing does, in fact, maximize spectral efficiency, its contentions are simply not true. Shared frequencies inhibit spectrally efficient behavior. All methods of sharing a frequency inevitably restrict loading because the need for terminal connection and monitoring equipment lessens the total amount of airtime available on a channel. Frequency sharing also eliminates the ability of licensees to control the quality of service offered. A licensee on a shared channel that invests in high quality, spectrally efficient equipment is not likely to be the beneficiary of that investment. Others can load the channel, utilizing equipment and designs which are equally or, more typically, from PageNet's perspective, less spectrally efficient. Further, frequency sharing requires a carrier to spread the costs of its network over fewer subscribers than if the channel were exclusive.

Conversely, channel exclusivity permits carriers to benefit from the introduction of spectrum efficient technologies and thus provides incentives for carriers to operate in the most efficient mode available. Moreover, exclusivity is not an

untested means of promoting spectrum efficient technologies. The concept of exclusivity has been proven; it has gained such general acceptance that it has become viewed as an automatic feature of new allocations. See Report and Order, PR Docket 89-552, 6 FCC Rcd 2356, 2371 ¶19 (1991) ("220 MHz Order").

As APCP's proposal clearly recognizes, where PCP operators have both the flexibility and the incentive to install highly efficient technologies without the risk of having their efforts nullified by a frequency sharing requirement, the end-user benefits. The ultimate result of exclusive frequency use for qualified applicants will be higher quality communications for end-users (e.g., less wait time for page delivery and interference free communications).

**2. Earned Exclusivity Will Not Result in an Overabundance of Nationwide Systems Nor Will It Preclude Local and Regional Service**

The concerns expressed by several commenters that APCP's proposal will result in a mass conversion to national systems at 929 MHz is simply not grounded in reality. For example, Mtel argues that six of the forty 900 MHz channels would immediately be set aside for exclusive national use by four PCP operators, and that all of the remaining thirty-four frequencies would later be converted to national systems. Mtel Comments at 5. Mtel completely ignores the realities of constructing and operating a nationwide system. The financial burdens associated with such an undertaking, as amply demonstrated by APCP's Petition and

PageNet's Comments, are enormous.<sup>2</sup> Only a limited number of companies have the resources to construct and operate a nationwide system. Therefore, Mtel argues without foundation when it suggests that APCP's proposal is certain to lead to the conversion of the majority of the 900 MHz PCP frequencies to exclusive national systems.

Making a parallel argument, two commenters, Dial Page and Dial-A-Page, suggest that no grant of exclusive nationwide frequencies should be made without a concomitant showing of need.<sup>3</sup> As both PacTel and PageNet explain in their Comments, the paging business is increasingly becoming a wide-area business with service territories routinely expanding to cover entire states, multiple states and, in some instances, the entire nation. The one-way messaging market is currently experiencing growth unparalleled in its history. By industry estimates, the current

---

<sup>2</sup> APCP estimates, and PageNet concurs, that to construct thirty (30) transmitter sites in the first year, licensees would have to make a capital outlay of approximately \$600,000 with additional monthly site rental of approximately \$6,000. For a nationwide system, this outlay would escalate to approximately \$6,000,000, with \$60,000 per month for site rental.

<sup>3</sup> Mtel also makes the argument that the demand for nationwide and regional systems will be satisfied by the service proposals tendered for the Commission's consideration in the 930-931 MHz advanced messaging service proceeding. See Mtel Comments at 8-13. This argument is not germane -- whatever the outcome of the 930-931 MHz proceeding, the frequencies are expressly reserved for advanced paging, not conventional paging. See Amendment of Parts 2 and 22 to Allocate Spectrum in the 928-941 MHz Band and Established Rules, Policies and Procedures for One-Way Paging Stations, 89 FCC 1337, 1342 (1982). APCP's proposal was developed in response to the distinct, steadily increasing demand for conventional paging services, which can be provided at 929 MHz.

penetration rate for one-way messaging services is approximately 5% and is anticipated to grow to 10 to 15% in the next 5-10 years. PacTel Comments at 2; see also PageNet Comments at 5.

The argument made by Dial Page and Dial-A-Page that conversion to national systems would preclude the offering of local or regional service is also inherently flawed. Nationwide systems will undoubtedly offer their customers a choice of services, e.g., local, regional, or national service, on the same frequency according to the customer's needs. Thus, from an end-user's and, accordingly, a public policy perspective, new national systems will not detract from, but enhance service offerings as they increase competition.<sup>4</sup>

Mtel also raises related concerns about the erosion of spectrum opportunities for purely private operations. Mtel

---

<sup>4</sup> The Commission has expressly recognized the need for nationwide allocations in various contexts, including conventional private and common carrier paging and narrowband technologies. The Commission has aptly noted that in today's highly mobile society, many users have a need for these types of communications services in more than one geographic area, specifically, on a regional or national basis. See Amendment of Parts 2 and 22 of the Commission's Rules to Allocate Spectrum in the 928-941 MHz Band and to Establish Other Rules, Policies, and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Service, 89 F.C.C.2d 1337 (1982) ("One Way Paging") (allocating common carrier paging frequencies for nationwide use); Amendment of Parts 2 and 22 of the Commission's Rules to Allocate Spectrum in the 928-941 MHz Band and to Establish Other Rules, Policies, and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Service, 91 F.C.C.2d 1214 (1982) ("Paging Operations") (establishing nationwide frequencies for private carrier paging); see also Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, 6 FCC Rcd 2356 (1991) ("220 MHz Order").

Comments at 7. Again, its concerns are hollow as the Commission has made certain channels available specifically for noncommercial use. There are two pools of frequencies allocated at 929 MHz for one-way paging: one for PCP providers, and one for noncommercial paging providers.<sup>5</sup> While the Commission originally allocated thirty (30) channels for noncommercial paging and ten (10) for PCP operations, it revised its rules in 1985 to accommodate a predominant interest in the provision of PCP services.<sup>6</sup> Because end-users find it more cost effective to obtain service from PCP providers, it was logical for the Commission to reallocate ten channels from the noncommercial paging pool to the private carrier paging pool.

As a result, there are presently twenty (20) channels allocated for noncommercial paging and twenty (20) for PCP operation. 47 C.F.R. § 90.494(a). The Commission also has authorized inter-pool sharing of these frequencies where an applicant can show that no satisfactory frequencies exist in its pool and that the requested frequency is available. 47 C.F.R. § 90.494(g). Thus, private operators can access PCP frequencies where the need arises.

---

<sup>5</sup> See Amendment of Parts 2, 22, and 90 of the Commission's Rules to Allocate Spectrum in the 928-941 MHz band and to establish other rules, policies and procedures for one-way paging stations in the Public and Private Land Mobile Radio Services, 91 F.C.C. 2d 1214, 1223 (1982).

<sup>6</sup> See Private Carrier Paging Operations in the 929-930 MHz Band, 58 RR2d 1290, 1291 (1985). Between 1982 and 1985, the Commission authorized over 600 PCP stations and less than 30 noncommercial stations. Id. at 1291.



This allocation scheme has more than satisfied the demand for private operations. As the Commission has ensured adequate spectrum to accommodate the future needs of noncommercial operations, it is consistent with Commission policy to adopt rules that will encourage carriers to invest in and develop PCP systems in response to market demand. APCP's proposal does exactly that.

### **3. APCP's Proposal Allows Large and Small Carriers to Exist Side by Side**

Both Mtel and Dial Page attempt to arouse the Commission's passions by purporting to champion the cause of small, start up companies. Their oppositions allege that the APCP proposal is discriminatory in favor of large, well-financed paging concerns. However, apparently because of their myopic focus on precluding nationwide and regional competition, Mtel and Dial Page completely ignore the fact that APCP's proposal is designed to allow large and small carriers to exist side by side.

APCP's proposal makes spectrum available for smaller entities with the resources to develop and implement systems tailored to their own needs, as well as spectrum for larger commercial carriers to establish systems that can provide nationwide service to meet the various and diverse requirements of a number of entities. Mtel and Dial Page completely overlook the fact that APCP has proposed earned exclusivity not only for national and regional wide-area systems, but also for local companies that meet a six transmitter minimum. This six transmitter protection specifically benefits smaller start ups.

Moreover, as APCP recognizes, there are paging systems, generally consisting of less than six transmitter sites, for which frequency sharing does not present any problem. Contrary to Dial Page's assertion that APCP intends to eliminate all frequency sharing, APCP's proposal would allow sharing in these instances to continue.

#### **4. APCP's Proposal Offers Adequate Safeguards to Thwart Potential Speculative Abuses**

Most commenters in this proceeding recognize and address the potential for abuses like speculation and warehousing when there is a grant of any exclusive frequency. Therefore, APCP carefully crafted its proposed rules to deter such abuses. As PageNet stated in its Comments, it believes that APCP's proposal will be effective in thwarting speculation. PageNet Comments at 20.

Generally, speculation in Commission licenses has occurred when there is little up front capital required, as was the case with the 220 MHz local systems and 900 MHz SMR applications. Under APCP's earned exclusivity proposal, however, licensees must satisfy stringent construction criteria, and thus expend substantial capital, to qualify for channel exclusivity.

Construction requirements have proven an effective deterrent to abuse. For example, in its 220 MHz Order, the Commission recognized that by "adopting entry criteria for nationwide applicants to ensure that all potential nationwide licensees intend to construct a nationwide system and that they

have the resources to implement a nationwide system," the Commission would minimize the filing of speculative applications. 6 FCC Rcd at 2357. The Commission did not impose entry criteria for non-nationwide systems, and was flooded with 50,000 applications.

The transmitter construction criteria proposed by APCP are more formidable than the benchmarks set forth for nationwide licensees in the Commission's 220 MHz Order, and will have a far more substantial deterrent effect, as pointed out in both PageNet's and PacTel's Comments. They necessarily require an investment of millions of dollars in system construction and operation. See PageNet Comments at 6; PacTel Comments at 3. APCP proposes that the Commission not only require that the transmitters be constructed, but also that constructed transmitters meet these requirements: (1) minimum output power of 100 watts (2) simulcast capability and (3) be part of a functioning paging system. Those transmitters not satisfying these criteria will not count toward the licensee's total construction requirements. Thus, the construction requirements are substantive and less susceptible to abuse.

Mtel suggests that APCP's proposal does not offer effective deterrents to warehousing and speculative abuses, primarily because a national system licensee would earn exclusive rights on the basis of a "mere" 300 transmitter investment. Mtel Comments at 7. Mtel's statement is completely illogical because, as APCP and PageNet have repeatedly demonstrated, 300 transmitters clearly represents a sizable investment of millions of dollars.

To put this 300 transmitter figure in further perspective, Mtel's entire nationwide system consists of 400 transmitters. Thus, Mtel should recognize that constructing 300 transmitters goes a long way toward providing comprehensive nationwide service.

Mtel names six PCP operators which currently meet the 300 transmitter threshold. Mtel Comments at 5. Contrary to what Mtel implies, these operators are large, established companies with strong service records. They are clearly not speculators -- just Mtel's competitors.<sup>7</sup>

In its remarks addressing the issue of speculative abuses, Dial Page cites Washington, D.C. as an example of an area in which warehousing has occurred on non-nationwide frequencies. Dial Page argues that within a twenty mile radius of the District of Columbia, all but three of the 37 non-nationwide 931 MHz channels have been allocated. Dial Page Comments at 6 n.4. Dial Page goes on to offer a unique reason as to why the Commission should believe that many of the 34 allocated frequencies are being warehoused -- only 27 carriers advertise in the Yellow Pages.

Dial Page's argument is speculative at best. In any event, APCP proposes for PCPs an entirely different set of rules which, as demonstrated above, will be effective in thwarting potential speculative abuses.

---

<sup>7</sup> Mtel's opposition also implies that because national systems accruing to PageNet would be the product of applications processed subsequent to the freeze, PageNet might be engaged in warehousing. Conversely, PageNet has built 929 MHz systems as a result of these allocations and is already serving well over 100,000 subscribers in Florida, Georgia, and New Jersey.

**5. APCP's Proposal is Consistent With the Language and Intent of Section 332 of the Communications Act**

Mtel's assertion that APCP's proposal will render Section 332 of the Communications Act, 47 U.S.C. § 332, a nullity is inconsistent with the language of the statute and Congressional intent. Congress enacted Section 332(c)(1) to provide a clear demarcation between private and common carrier services. As its premise, Mtel states that adoption of APCP's proposal would eliminate that demarcation by removing what Mtel claims is the only remaining distinction between common carrier paging systems and private carrier systems. Mtel Comments at 15-16. Mtel claims that granting PCP operators channel exclusivity in some way removes them from their classification as private carriers. Id. However, exclusivity has never been the defining characteristic of common versus private carrier systems. For example, PLMR assignments in the 470-512 MHz band and conventional 800 MHz systems are currently licensed on the basis of "earned exclusivity." See 47 C.F.R. §§ 90.313 and 90.621(a)(2).

Moreover, in enacting the Communications Amendment Act of 1982, Congress recognized the Commission's broad discretion to dictate which land mobile systems are to be regulated as private. Congress directed the Commission to "add, modify, or delete private land mobile services as the need arises, consistent with the guidelines specified in Section 332(a)." H.R. Conf. Rep. No. 765, 97th Cong., 2d Sess. 54, reprinted in 1982 U.S. Code Cong. & Ad. News 2296, 2298. Section 332(a) allows the FCC, when faced

with future technological and public policy advances, to create new rules that make more efficient use of the spectrum.<sup>8</sup> As demonstrated above, APCP's proposal promotes spectral efficiency. Moreover, by virtue of spectral efficiencies and by encouraging operators to invest in and expand PCP systems, APCP's proposal encourages competition and will result in the provision of services to the largest feasible number of subscribers. Thus, APCP's proposal is entirely consistent with the language and intent of Section 332.

### III. CONCLUSION

PageNet supports APCP's Petition for a Notice of Proposed Rulemaking to amend Section 90.494 of the Commission's Rules to provide for exclusive use of certain Private Carrier Paging channels in the 900 MHz band. APCP's proposed earned exclusivity will serve the public interest and ensure the full development of the 900 MHz band by facilitating the development of spectrum efficient technologies, spurring PCP growth, increasing

---

<sup>8</sup> Section 332(a) specifically instructs the Commission to manage the private land mobile services spectrum subject to four considerations:

- That such actions will -
- (1) promote the safety of life and property;
  - (2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and marketplace demands;
  - (3) encourage competition and provide services to the largest feasible number of users; or
  - (4) increase interservice sharing opportunities between private land mobile services and other services.

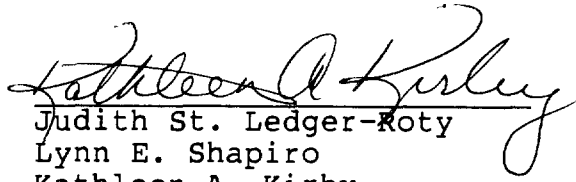
47 U.S.C. § 332(a) (1982).

competition and setting up a regulatory framework capable of taking PCP into the future. PageNet believes that "earned exclusivity," as defined in APCP's Petition, will allow both large and small carriers to exist side by side while maximizing spectral, technical, and operational efficiencies. Moreover, the efficiencies resulting from this new regulatory framework will serve the public interest by providing consumers with higher quality, diverse communications services at a lower price. As the comments in opposition filed in this proceeding fail to demonstrate any countervailing public interest detriment, PageNet urges the Commission to expeditiously adopt APCP's proposal.

Respectfully submitted,

PAGING NETWORK, INC.

By:

  
Judith St. Ledger-Roty  
Lynn E. Shapiro  
Kathleen A. Kirby

REED SMITH SHAW & McCLAY  
1200 18th Street, N.W.  
Washington, D.C. 20036  
(202) 457-8656

Its Attorneys

Dated: June 25, 1992

**EXHIBIT 1**

Flyer Entitled "Plain Facts About NABER's Petition for 900 MHz Protection" Distributed by Mtel to PCP Licensees Urging Them to Oppose APCP's Petition



## **PLAIN FACTS ABOUT NABER'S PETITION FOR 900 MHz PROTECTION**

The Federal Communications Commission ("FCC") has requested public comment on a NABER petition to establish frequency protection for 900 MHz PCPs. While earned exclusivity for PCP licensees may have merit, NABER's proposal goes well beyond such objectives to propose exclusive national set-asides of frequencies for any licensee operating 300 transmitters anywhere in the country. Set forth below is a brief review of the NABER petition and its serious implications for all existing and future PCP licensees.

NABER's Petition would set-aside exclusive Frequencies for 900 MHz without according comparable rights and opportunities to 150 MHz and 450 MHz licensees. NABER has asked the FCC to establish National PCP Systems consisting of 300 or more transmitter sites operating on the same frequency in any number of locations throughout the United States. Once a company meets the 300 transmitter threshold, no other PCP applicant or licensee would be licensed on that frequency anywhere in the country. Similar rights would not be extended to licensees in the 150 MHz and 450 MHz bands who would face competition from expanded local, regional and national 900 MHz systems.

NABER's Plan would immediately give national spectrum rights to a few of its biggest members. The NABER petition does not disclose that its National System proposal would automatically and immediately give at least three of its members exclusive rights to at least four frequencies across the country, including markets they do not now serve and may never serve in the future. Smaller PCP would not benefit from this set aside for large carriers.

NABER's plan would freeze existing PCP operations and lock out new PCP entrants. In its petition, NABER fails to explain how the instant, exclusive national frequency rights extended to a privileged few of its members would protect the rights of other carriers already operating on those frequencies. In fact, NABER's only recognition of the problem is buried in a footnote that cryptically states that "...existing systems should be able to continue operations and expand, if necessary, within the system's current operational area."

NABER's plan does nothing to promote migration of lower band PCPs to 900 MHz. A stated goal of the petition is to encourage PCPs in the congested lower bands to migrate to 900 MHz frequencies. However, nothing in the petition gives force and effect to that objective. No preference is accorded to lower band applicants and the National System proposal inherently blocks migration - even in markets where the National System licensee is not operational.

NABER's National System Proposal would cause a flood of speculative filings. NABER is already receiving a surge of 900 MHz applications in anticipation of its proposal being adopted. The 300 transmitter sites test does not include any loading requirements and contemplates a "slow growth" construction schedule rather than short absolute deadlines. This is an open invitation to speculative abuses.

Act now if you are concerned! NABER and the large carrier beneficiaries of the National System proposal are working hard for its prompt adoption. Without your participation, spectrum opportunities for growth, expansion and migration could be quickly closed to less favored PCPs. If you are concerned, we have attached a sample response you may direct to the Federal Communications Commission, Office of the Secretary, 1919 M Street, NW, Washington, DC 20554. Your support and participation is needed now!

Mobile Telecommunication Technologies Corp.  
Ernest A. Oswalt